

Application No. 09/921,844
Amendment dated December 29, 2009
Reply to Office Action of July 1, 2009

REMARKS

Applicant amended independent claim 1 to further define Applicant's claimed invention. Support for the amendment to independent claim 1 can be found at least in Fig. 15 of the application. No new matter has been added.

In the Office Action, the Examiner rejected claim 1 and its dependent claims under 35 U.S.C. § 102(b) as anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as obvious over Soviet Union Patent No. SU1107854. Independent claim 1, as amended, recites a spinal implant comprising at least a first and a second surface projection each having forward, rearward, and side facets each having a perimeter with a base, "said base of said perimeter of each of said side facets being longer than said base of said perimeter of said forward facet." SU1107854 does not teach or suggest such structure. Conversely, Fig. 1 of SU1107854 shows that for each of the projections, the base of the forward facet is longer than the bases of the side facets. Accordingly, Applicant submits that the Examiner's rejection of independent claim 1 and its dependent claims under 35 U.S.C. § 102(b) or under 35 U.S.C. § 103(a) over SU1107854 has been overcome.

The Examiner rejected all of the claims under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,482,233 to Aebi et al. ("Aebi") in view of U.S. Patent No. 6,592,624 to Fraser ("Fraser"); and rejected all of the claims under 35 U.S.C. § 103(a) as being unpatentable over Fraser in view of U.S. Patent No. 6,258,125 to Paul et al. ("Paul"). Applicant is submitting concurrently herewith a Declaration of Gary K. Michelson under 37 C.F.R. § 1.131 establishing reduction to practice of the claimed invention prior to the earliest effective filing date of Fraser. Applicant submits that the rejections in view of Fraser have been rendered moot.

Applicant submits that independent claims 1 and 219 are patentable and that dependent claims 3, 5, 19-56, 203, 204, 207-209, 228-254, 259-271, and 277-286 dependent from independent claim 1 or 219, or claims dependent therefrom, are patentable at least due to their dependency from an allowable independent claim.

In view of the foregoing remarks, it is respectfully submitted that the claims, as

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amended, are patentable. Therefore, it is requested that the Examiner reconsider the outstanding rejections in view of the preceding comments. Issuance of a timely Notice of Allowance of the claims is earnestly solicited.

To the extent any extension of time under 37 C.F.R. § 1.136 is required to obtain entry of this reply, such extension is hereby respectfully requested. If there are any fees due under 37 C.F.R. §§ 1.16 or 1.17 which are not enclosed herewith, including any fees required for an extension of time under 37 C.F.R. § 1.136, please charge such fees to our Deposit Account No. 50-3726.

Respectfully submitted,

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